

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MICHAEL A. CLYBURN,)	
)	
Petitioner,)	1:10CV434
)	1:98CR177-1
v.)	1:98CR178-1
)	1:98CR179-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on June 22, 2010, was served on the parties in this action. Petitioner objected to the Recommendation.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

IT IS THEREFORE ORDERED that Petitioner's "Petition for Writ of Audita Querela" [Doc. 94] is construed as a motion to vacate, set aside or correct sentence, and that the motion to vacate is dismissed without prejudice for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the court of appeals as required by 28 U.S.C. §§ 2255 and 2244

and the Fourth Circuit Local Rule 22(d). A Judgment dismissing this action will be entered contemporaneously with this Order.

William L. Osteen, Jr.
United States District Judge

Date: February 7, 2011